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INCOME TAX CONVENTION WITH SPAIN, WITH PROTOCOL

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE KINGDOM OF SPAIN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, TOGETHER WITH A RELATED PROTOCOL, SIGNED AT MADRID ON FEBRUARY 22, 1990

APRIL 19, 1990.—Convention was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *April 18, 1990.*

To the Senate of the United States:

I transmit herewith for Senate advice and consent to ratification the Convention between the United States of America and the Kingdom of Spain for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, together with a related Protocol, signed at Madrid on February 22, 1990. I also transmit the report of the Department of State.

The convention is the first income tax treaty to be negotiated between the United States and Spain. Based in large part on model income tax treaties developed by the Department of the Treasury and the Organization for Economic Cooperation and Development, it also reflects changes in tax law resulting from the enactment of the Tax Reform Act of 1986.

The convention provides rules governing the taxation by each State of income derived by residents of the other State. The convention also contains provisions that prevent "treaty shopping" and authorize the exchange of information and administrative cooperation between the tax authorities of the two States.

I recommend that the Senate give early and favorable consideration to the convention and protocol and give its advice and consent to ratification.

GEORGE BUSH.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, March 21, 1990.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the Convention between the United States of America and the Kingdom of Spain for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, together with a related Protocol, signed at Madrid on February 22, 1990.

The Convention is the first income tax treaty to be negotiated between the United States and Spain. It is based on the model income tax conventions published by the Organization for Economic Cooperation and Development in 1977 and by the United States Department of the Treasury in 1981. Changes in United States income tax law resulting from the enactment of the Tax Reform Act of 1986 are reflected in the Convention.

The Convention provides for reduced taxation at source of investment income derived from one State by residents of the other State. The rate of tax withheld at source on dividends may not exceed 15 percent and is reduced to 10 percent in the case of dividends from 25 percent-owned subsidiaries to their parent corporations. The maximum tax on interest, royalties, and branch profits is 10 percent. In the case of interest, the general 10 percent limit is reduced to zero on interest derived by either State and on interest paid on long-term bank loans or on commercial credit for the importation of capital equipment. The tax on excess interest of bank branches is 5 percent. In the case of royalties, lower rates of 5 percent or 8 percent apply in certain cases, 5 percent on royalties for literary or artistic copyrights, and 8 percent on royalties for scientific copyrights, film rentals, and rentals of equipment. Gains on the sale of shares in a company which is a resident of one State may be taxed by that State in certain cases where the recipient owns at least 25 percent of the company's capital or where the shares are represented by real property holdings; in other cases gain on the sale of corporate securities may be taxed only in the recipient's country of residence.

In addition, the Convention provides rules for the taxation at source of business profits and employment income which are similar to those in the models and in other United States income tax conventions. Special tax relief at source, based on similar provisions in some other United States income tax conventions, is pro-

vided for visiting students, researchers, and trainees. The Convention also contains a provision limiting its benefits to persons properly entitled to receive them and excluding, for example, certain enterprises in either State owned by residents of third countries. Such provisions have been included in all recent United States tax treaties.

A technical memorandum explaining in detail the provisions of the Convention and Protocol is being prepared by the Department of the Treasury and will be submitted separately to the Senate Committee on Foreign Relations.

The Department of the Treasury, with the cooperation of the Department of State, was primarily responsible for the negotiation of the Convention and Protocol. They have the full approval of both Departments.

Respectfully submitted,

LAWRENCE S. EAGLEBURGER.

Convention Between the United States of America and the Kingdom of Spain for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income

The United States of America and the Kingdom of Spain, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

Article 1

General Scope

1. This Convention shall apply to persons who are residents of one or both of the Contracting States, except as otherwise provided in the Convention.

2. The Convention shall not restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded:

(a) by the laws of either Contracting State; or

(b) by any other agreement between the Contracting States.

3. Notwithstanding any provision of the Convention except paragraph 4, a Contracting State may tax its residents (as determined under Article 4 (Residence)), and by reason of citizenship may tax its citizens, as if the Convention had not come into effect.

4. The provisions of paragraph 3 shall not affect

(a) the benefits conferred by a Contracting State under paragraph 2 of Article 9 (Associated Enterprises), under paragraph 4 of Article 20 (Pensions, Annuities, Alimony, and Child Support), and under Articles 24 (Relief from Double Taxation), 25 (Non-Discrimination), and 26 (Mutual Agreement Procedure); and

(b) the benefits conferred by a Contracting State under Articles 21 (Government Service), 22 (Students and Trainees), and 28 (Diplomatic Agents and Consular Officers), upon individuals who are neither citizens of, nor have immigrant status in, that State.

Article 2

Taxes Covered

1. The existing taxes to which this Convention shall apply are:

(a) in Spain:

(i) the Income Tax on Individuals (el Impuesto sobre la Renta de las Personas Fisicas), and

(ii) the Corporation Tax (el Impuesto sobre Sociedades);

(b) in the United States: the Federal income taxes imposed by the Internal Revenue Code (but excluding social security contributions), and the excise taxes imposed on insurance premiums paid to foreign insurers and with respect to private foundations. The Convention shall, however, apply to the excise taxes imposed on insurance premiums paid to foreign insurers only to the extent that the risks covered by such premiums are not reinsured with a person not entitled to exemption from such taxes under this or any other Convention which applies to these taxes.

2. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws and of any official published material concerning the application of the Convention.

ARTICLE 3

General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:

(a) the term "Spain" means the Spanish State and, when used geographically means the territory of the Spanish State including any area outside the territorial sea in which, in accordance with international law and domestic legislation, the Spanish State may exercise jurisdiction or sovereign rights with respect to the seabed, its subsoil, and superjacent waters and their natural resources.

(b) the term "United States" means the United States of America and, when used geographically means the states thereof, the District of Columbia, the territorial sea, and any area outside the territorial sea in which, in accordance with international law and domestic legislation, the United States may exercise jurisdiction or sovereign rights with respect to the seabed, its subsoil, and superjacent waters and their natural resources.

(c) the terms "a Contracting State" and "the other Contracting State" mean Spain or the United States as the context requires;

(d) the term "person" includes an individual, a company, and any other body of persons;

(e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(g) the term "national" means:

(i) any individual possessing the nationality of a Contracting State; and

(ii) any legal person, association, or other entity deriving its status as such from the law in force in a Contracting State;

(h) the term "international traffic" means any transport by a ship or aircraft, except when such transport is solely between places in the other Contracting State;

(i) the term "competent authority" means:

(i) in the case of the United States: the Secretary of the Treasury or his delegate; and

(ii) in the case of Spain: the Minister of Economy and Finance or his authorized representative.

2. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires, and subject to the provisions of Article 26 (Mutual Agreement Procedure), have the meaning which it has under the laws of that State concerning the taxes to which the Convention applies.

ARTICLE 4

Residence

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of similar nature, provided, however, that this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his status shall be determined as follows:

(a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (center of vital interests);

(b) if the State in which he has his center of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

(c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

(d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavor to settle the question by mutual agreement and determine the mode of application of the Convention to such person. If the competent authorities are unable to make such a determination, the person shall not be treated as a resident of either Contracting

State except for the purposes of payments of such person covered by paragraphs 1 through 4 of Article 10 (Dividends), Article 11 (Interest), and Article 12 (Royalties).

ARTICLE 5

Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop; and

(f) a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources.

3. A building site or construction or installation project, or an installation or drilling rig or ship used for the exploration or exploitation of natural resources, constitutes a permanent establishment only if it lasts more than six months.

For the purpose of computing the time limits in this paragraph, activities carried on by an enterprise associated with another enterprise within the meaning of Article 9 (Associated Enterprises) shall be regarded as carried on by the last-mentioned enterprise if the activities of both enterprises are substantially the same, unless they are carried on simultaneously.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage, display, or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display, or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(f) the maintenance of a fixed place of business solely for any combination of the activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person—other than an agent of an independent status to whom paragraph 6 applies—is acting on behalf of an enterprise and has

and habitually exercises in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent, or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6

Income From Real Property (Immovable Property)

1. Income derived by a resident of a Contracting State from real property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "real property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term in any case shall include property accessory to immovable property, livestock and equipment used in agriculture and forestry, right to which the provision of general law respecting landed property apply, usufruct of immovable property, and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, aircraft, and containers used in international traffic shall not be regarded as real property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of real property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

5. Where the ownership of shares or other rights in a company or other entity entitles the owner of such shares or rights to the enjoyment of real property held by the company or other entity, the income from the direct use, letting, or use in any other form of such right of enjoyment may be taxed in the Contracting State in which the real property is situated.

ARTICLE 7

Business Profits

1. The business profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on or has carried on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on or has carried on business as aforesaid, the business profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall be in each Contracting State be attributed to that permanent establishment the business profits which it might be expected to make if it were a distinct and independent enterprise engaged in the same or similar activities under the same or similar conditions.

3. In determining the business profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including research and development expenses, interest, and other similar expenses and a reasonable amount of executive and general administrative expenses, whether incurred in the State in which the permanent establishment is situated or elsewhere.

4. No business profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. For the purposes of this Convention, the business profits to be attributed to the permanent establishment shall incude only the profits or losses derived from the assets or activities of the permanent establishment and shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

6. Where business profits include items of income which are dealth with separately in other Articles of the Convention, the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8

Shipping and Air Transport

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. The provisions of paragraph 1 shall also apply to profits from participation in a pool, a joint business, or an international operating agency.

ARTICLE 9

Associated Enterprises

1. Where:

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or

(b) the same persons participate directly or indirectly in the management, control, or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which, but for those conditions, would have accrued to one of the enterprises, but by reason of those conditions have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State, and taxes accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other State, and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be paid to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such individuals may be also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

(a) 10 percent of the gross amount of the dividends if the beneficial owner is a company which owns at least 25 percent of the voting stock of the company paying the dividends;

(b) 15 percent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident. The term "dividends" also includes income from arrangements, including debt obligations, carrying the right to participate in profits, to the extent so characterized under the law of the Contracting State in which the income arises.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on or has carried on business in the other Contracting State, of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs or has performed in that other State independent personal services from a fixed base situated therein, and the dividends are attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 15 (Independent Personal Services), as the case may be, shall apply.

5. A Contracting State may not impose any tax dividends paid by a company which is not a resident of that State, except insofar as the dividends are paid to a resident of that State or the dividends are attributable to a permanent establishment or a fixed base situated in that State.

ARTICLE 11

Interest

1. Interest arising in a Contracting State and derived by a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent of the gross amount thereof.

3. Notwithstanding the provisions of paragraph 2:

(a) Interest beneficially owned by a Contracting State, political subdivisions or local authorities thereof, and such government instrumentalities as may be agreed upon by the competent authorities, shall be taxable only in that State;

(b) interest on long-term loans (5 or more years) granted by banks or other financial institutions which are residents of a Contracting State shall be taxable only in that State; and

(c) interest paid in connection with the sale on credit of any industrial, commercial, or scientific equipment, shall be taxable only in the Contracting State of which the beneficial owner of the interest is a resident.

4. The term "interest" as used in this Convention means income from debt-claims of every kind, whether or not secured by mortgage and, subject to paragraph 3 of Article 10 (Dividends), whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities, and income from bonds or debentures, including premiums or prizes attaching to such securities, bonds, or debentures, as well as all other income that is treated as income from money lent by the taxation law of the Contracting State in which the income arises. Penalty charges for late payments shall not be regarded as interest for the purposes of the Convention.

5. The provisions of paragraphs 1, 2, and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on or has carried on business in the other Contract-

ing State, in which the interest arises, through a permanent establishment situated therein, or performs or has performed in that other State independent personal services from a fixed base situated therein, and the interest is attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 15 (Independent Personal Services), as the case may be, shall apply.

6. For purposes of this Article, interest shall be deemed to arise in a Contracting State when the payer is that State itself or a political subdivision, local authority, or resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of the Convention.

ARTICLE 12

Royalties

1. Royalties arising in a Contracting State and derived by a resident of the other Contractng State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner is a resident of the other Contracting State, the tax so charged shall not exceed:

(a) 5 percent of the gross amount of royalties for the use of, or the right to use, any copyrights of literary, dramatic, musical, or artistic work;

(b) 8 percent of the gross amount of royalties received in consideration for the use of, or the right to use, cinematographic films, or films, tapes, and other means of transmission or reproduction of image or sound, and of the gross amount of royalties for the use of, or the right to use, industrial, commercial, or scientific equipment, and for any copyright of scientific work; and

(c) 10 percent of the gross amount of all other royalties.

Notwithstanding other provisions of this paragraph, royalties received as a consideration for technical assistance shall be taxable at the rate applying to the royalties stipulated in respect of the rights or property to which the technical assistance is related. To

this effect, the taxable base shall be computed net of labor and of material costs incurred in producing such royalties.

3. The term "royalties" as used in this Convention means payments of any kind received in consideration for the use of, or the right to use, any copyright of literary, dramatic, musical, artistic, or scientific work, including cinematorgraphic films or films, tapes, and other means or image or sound reproduction, any patent, trademark, design or model, plan, secret formula or process, or other like right or property, or for the use of or the right to use industrial, commercial, or scientific equipment, or for information concerning industrial, commercial, or scientific experience. It also includes payments for technical assistance performed in a Contracting State by a resident of the other State where such assistance is related to the application of any such right or property. The term "royalties" also includes gains derived from the alienation of such right or property to the extent that such gains are contingent on the productivity, use, or disposition thereof.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on or has carried on business in the other Contracting State, in which the royalties arise, through a permanent establishment situated therein, or performs or has performed in that other State independent personal services from a fixed base situated therein, and the royalties are attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 15 (Independent Personal Services), as the case may be, shall apply.

5. For purposes of this Article, royalties shall be deemed to arise in a Contracting State when the payer is that State itself or a political subdivision or local authority of that State or a person who is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of one of the Contracting States or not, has in one of the Contracting States a permanent establishment or fixed base in connection with which the liability to pay the royalties was incurred, and the royalties are borne by the permanent establishment or fixed base, then the royalties shall be deemed to have their source in the State in which the permanent establishment or fixed base is situated. Where the person paying the royalties is not a resident of either Contracting State, and the royalties are not borne by a permanent establishment or fixed base in either Contracting State, but the royalties relate to the use of, or the right to use, in one of the Contracting States, any property or right described in paragraph 3, the royalties shall be treated as income from sources in that State.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right, or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of the Convention.

ARTICLE 13

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of real property situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of stock, participations, or other rights in a company or other legal person the property of which consists, directly or indirectly, mainly of real property situated in Spain, may be taxed in Spain.

3. Gains from the alienation of personal property which are attributable to a permanent establishment which an enterprise of a Contracting State has or had in the other Contracting State, or which are attributable to a fixed base which is or was available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, and gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or such a fixed base, may be taxed in that other State.

4. In addition to gains taxable under the foregoing paragraphs of this Article, gains derived by a resident of a Contracting State from the alienation of stock, participations, or other rights in the capital of a company or other legal person that is a resident of the other Contracting State may be taxed in that other Contracting State if the recipient of the gain, during the 12-month period preceding such alienation, had a participation, directly or indirectly, of at least 25 percent in the capital of that company or other legal person. Such gains shall be deemed to arise in that other State to the extent necessary to avoid double taxation.

5. Gains derived by an enterprise of a Contracting State from the alienation of ships, aircraft, or containers operated in international traffic shall be taxable only in that State.

6. Gains described in Article 12 (Royalties) shall be taxable only in accordance with the provisions of Article 12.

7. Gains from the alienation of any property other than property referred to in paragraphs 1 through 6 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14

Branch Tax

1. Notwithstanding any other provision of this Convention, a company which is a resident of Spain may be subject in the United States to a tax in addition to the tax allowable under the other provisions of this Convention. Such additional tax may not exceed:

(a) 10 percent of the "dividend equivalent amount" of the business profits of the company which are effectively connected (or treated as effectively connected) with the conduct of a trade or business within the United States and are either attributable to a permanent establishment in the United States or subject to tax in the United States under Article 6 (Income from Real Property) or paragraph 1 of Article 13 (Capital Gains); and

(b) 10 percent of the excess, if any, or interest deductible in the United States in computing the profits of the company which are either attributable to a permanent establishment in the United States or subject to tax in the United States under Article 6 (Income from Real Property) or paragraph 1 of Article 13 (Capital Gains) over the interest paid by or from that permanent establishment or trade or business in the United States. In the case of a bank which is a resident of Spain the tax imposed under this subparagraph shall not be levied at a rate exceeding 5 percent.

2. Notwithstanding any other provision of this Convention, where a company which is a resident of the United States conducts business in Spain through a permanent establishment situated therein or derives income subject to tax in Spain under article 6 (Income from Real Property) or paragraph 1 of Article 13 (Capital Gains), Spain may, in addition to the tax allowable under the other provisions of this Convention and according to its internal legislation, impose a tax on the profits attributable to the permanent establishment or the income described above, not of the corporation tax on such profits or income, and on interest expenses deductible in computing such profits or income which are comparable to the interest referred to in paragraph 1(b). The additional tax shall not be charged at a rate exceeding 5 percent on the deductible interest expenses referred to above in the case of a bank which is a resident of the United States, and 10 percent in all other cases.

ARTICLE 15

Independent Personal Services

1. Subject to the provisions of Article 7 (Business Profits), income derived by a resident of a Contracting State in respect of professional services or similar activities of an independent character shall be taxable only in that State. However, such income may be taxed in the other Contracting State if such resident has or had a fixed based regularly available to him in the other Contracting State for the purpose of performing those activities. In that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational, or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists, and accountants.

ARTICLE 16

Dependent Personal Services

1. Subject to the provisions of articles 20 (Pensions, Annuities, Alimony, and Child Support) and 21 (Government Service), salaries, wages, and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any 12 month period;

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment as a member of the regular complement of a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

ARTICLE 17

Limitation on Benefits

1. A person which is a resident of a Contracting State and derives income from the other Contracting State shall be entitled under this Convention to relief from taxation in that other Contracting State only if:

(a) such person is an individual; or

(b) such person is a Contracting State, a political subdivision or local authority thereof, or a wholly-owned instrumentality thereof; or

(c) such person is a non-profit religious, charitable, scientific, literary, or educational private organization or a comparable public institution; or

(d) such person is a tax-exempt organization, other than those described in subparagraph (c), provided that more than half of the beneficiaries, members, or participants, if any, in such organization are entitled to the benefits of this Convention; or

(e) the income derived from the other Contracting State is derived in connection with, or is incidental to, the active conduct by such person of a trade or business in the first-mentioned State (other than the business of making or managing investments, unless these activities are carried on by a bank or insurance company); or

(f) the person deriving the income is a company in whose principal class of shares there is substantial and regular trading on a recognized securities exchange, or more than 50 percent of whose shares of each class is owned by a resident of that Contracting State in whose principal class of shares there is such substantial and regular trading on a recognized securities exchange; or

(g) both of the following conditions are satisfied:

(i) more than 50 percent of the beneficial interest in such person (or in the case of a company, more than 50

percent of the number of shares of each class of the company's shares) is owned, directly or indirectly, by persons who are entitled to the benefits of the Convention under subparagraphs (a), (b), (c), (d), or (f) or who are citizens of the United States; and

(ii) the gross income of such persons is not used in substantial part, directly, or indirectly, to meet liabilities (including liabilities for interest or royalties) other than to persons who are entitled to the benefits of the Convention under subparagraphs (a), (b), (c), (d), or (f) or who are citizens of the United States.

2. A person which is not entitled to the benefits of the Convention pursuant to the provisions of paragraph 1 may, nevertheless, demonstrate to the competent authority of the State in which the income arises that such person should be granted the benefits of the Convention. For this purpose, one of the factors the competent authorities shall take into account is whether the establishment, acquisition, and maintenance of such person and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under the Convention.

3. For purposes of subparagraph (f) of paragraph 1, the term "recognized securities exchange" means:

(a) the Spanish stock exchanges;

(b) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the Securities and Exchange Commission as a national securities exchange for purposes of the Securities Exchange Act of 1934; and

(c) any other stock exchange agreed upon by the competent authorities of the Contracting States.

4. For purposes of subparagraph (g)(ii) of paragraph 1, the term "gross income" means gross receipts, or where an enterprise is engaged in a business which includes the manufacture or production of goods, gross receipts reduced by the direct costs of labor and materials attributable to such manufacture or production and paid or payable out of such receipts.

ARTICLE 18

Directors' Fees

Directors' fees and similar payments derived by a resident of a Contracting State for services performed outside such Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 19

Artistes and athletes

1. Notwithstanding the provisions of Articles 15 (Independent Personal Services) and 16 (Dependent Personal Services), income dervied by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio, or television artiste, or a musi-

cian, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State except where the amount of the compensation derived by such entertainer or athlete, including expenses reimbursed to him or borne on his behalf, from such activities does not exceed ten thousand United States dollars ($10,000) or its equivalent in pesetas for the taxable year concerned.

2. Where income in respect of activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete but to another person, that income of that other person may, notwithstanding the provisions of Articles 7 (Business Profits) and 15 (Independent Personal Services), be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised, unless it is established that neither the entertainer or athlete nor persons related thereto participate directly or indirectly in the profits of that other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions, or other distributions.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by a resident of a Contracting State as an entertainer or athlete shall be exempt from tax by the other Contracting State if the visit to that other State is substantially supported by public funds of the first-mentioned State or a political subdivision or local authority thereof.

ARTICLE 20

Pensions, Annuities, Alimony, and Child Support

1. Subject to the provisions of Article 21 (Government Service):

(a) pensions and other similar remuneration derived and beneficially owned by a resident of a Contracting State in consideration of past employment shall be taxable only in that State; and

(b) social security benefits paid by a Contracting State to a resident of the other Contracting State or a citizen of the United States may be taxed in the first-mentioned State.

2. Annuities derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State. The term "annuities" as used in this paragraph means a stated sum paid periodically at stated times during a specific time period, under an obligation to make the payments in return for adequate and full consideration (other than services rendered).

3. Alimony paid to a resident of a Contracting State shall be taxable only in that State. The term "alimony" as used in this paragraph means periodic payments made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, which payments are taxable to the recipient under the laws of the State of which he is a resident.

4. Periodic payments for the support of a minor child made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, paid by a resident of a Contracting State to a resident of the other Contracting State, shall be taxable only in the first-mentioned State.

ARTICLE 21

Government Service

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15 (Independent Personal Services), 16 (Dependent Personal Services), 18 (Directors' Fees), 19 (Artistes and Athletes), and 20 (Pensions, Annuities, Alimony, and Child Support) shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

ARTICLE 22

Students and Trainees

1. (a) An individual who is a resident of a Contracting State at the beginning of his visit to the other Contracting State and who is temporarily present in that other Contracting State for the primary purpose of:

(i) studying at a university or other accredited educational institution in that other Contracting State, or

(ii) securing training required to qualify him to practice a profession or professional specialty, or

(iii) studying or doing research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary, or educational organization,

shall be exempt from tax by that other Contracting State with respect to the amounts described in subparagraph (b) of this paragraph for a period not exceeding five years from the date of his arrival in that other Contracting State.

(b) The amounts referred to in subparagraph (a) of this paragraph are:

(i) payments from abroad, other than compensation for personal services, for the purpose of his maintenance, education, study, research, or training;

(ii) the grant, allowance, or award; and

(iii) income from personal services performed in that other Contracting State in an aggregate amount not in excess of 5,000 United States dollars or its equivalent in Spanish pesetas for any taxable year.

2. An individual who is a resident of a Contracting State at the beginning of his visit to the other Contracting State and who is temporarily present in that other Contracting State as an employee of, or under contract with, a resident of the first-mentioned Contracting State, for the primary purpose of:

(a) acquiring technical, professional, or business experience from a person other than that resident of the first-mentioned Contracting State, or

(b) studying at a university or other accredited educational institution in that other Contracting State,

shall be exempt from tax by that other Contracting State for a period of 12 consecutive months with respect to his income from personal services in an aggregate amount not in excess of 8,000 United States dollars or its equivalent in Spanish pesetas.

3. This article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

ARTICLE 23

Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from real property as defined in paragraph 2 of Article 6 (Income from Real Property (Immovable Property)), if the beneficial owner of the income, being a resident of a Contracting State, carries on or has carried on business in the other Contracting State through a permanent establishment situated therein, or performs or has performed in that other State independent personal services from a fixed base situated therein, and the income is attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 15 (Independent Personal Services), as the case may be, shall apply.

ARTICLE 24

Relief from Double Taxation

1. In Spain, double taxation will be avoided, in accordance with the relevant provisions of the law of Spain, as follows:

(a) Where a resident of Spain derives income which, in accordance with the provisions of this Convention, may be taxed in the United States, other than solely by reason of citizenship, Spain shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax actually paid in the United States.

Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income derived from the United States.

(b) In the case of a dividend paid by a company which is a resident of the United States to a company which is a resident of Spain and which holds directly at least 25 percent of the capital of the company paying the dividend, in the computation of the credit there shall be taken into account, in addition to the tax creditable under subparagraph (a) of this paragraph, that part of the tax effectively paid by the first-mentioned company on the profits out of which the dividend is paid which relates such dividend, provided that such amount of tax is included, for this purpose, in the taxable base of the receiving company.

Such deduction, together with the deduction allowable in respect of the dividend under subparagraph (a) of this paragraph, shall not exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income subject to tax in the United States.

For the application of this subparagraph it shall be required that a 25 percent or greater participation in the company paying the dividend is held on a continuous basis during the taxable year in which the dividend is paid as well as during the previous taxable year.

(c) Where, in accordance with any provision of the Convention, income derived by a resident of Spain is exempt from tax in Spain, Spain may, nevertheless, take into account the exempted income in calculating the amount of tax on the remaining income of such resident.

2. In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle thereof), the United States shall allow to a resident or citizen of the United States as a credit against the United States tax on income

(a) the income tax paid to Spain by or on behalf of such citizen or resident; and

(b) in the case of a United States company owning at least 10 percent of the voting stock of a company which is a resident of Spain and from which the United States company receives dividends, the income tax paid to Spain by or on behalf of the distributing company with respect to the profits out of which the dividends are paid.

3. In the case of an individual who is a citizen of the United States and a resident of Spain, income which may be taxed by the United States by reason of citizenship in accordance with paragraph 3 of Article 1 (General Scope) shall be deemed to arise in Spain to the extent necessary to avoid double taxation, provided that in no event will the tax paid to the United States be less than the tax that would be paid if the individual were not a citizen of the United States.

ARTICLE 25

Non-Discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall apply to persons who are not residents of one or both of the Contracting States. However, for the purposes of United States tax, and subject to Article 24 (Relief from Double Taxation), a United States national who is not a resident of the United States and a Spanish national who is not a resident of the United States are not in the same circumstances.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs, and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Nothing in this Article shall be construed as preventing either Contracting State from imposing a tax as described in Article 14 (Branch Tax).

4. Except where the provisions of paragraph 1 of Article 9 (Associated Enterprises), paragraph 7 of Article 11 (Interest), or paragraph 6 of Article 12 (Royalties) apply, interest, royalties, and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purposes of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

5. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similarly situated enterprises of the first-mentioned State are or may be subjected.

6. The provisions of this Article shall, notwithstanding the provisions of Article 2 (Taxes Covered), apply to taxes of every kind and description imposed by a Contracting State or a political subdivision or local authority thereof.

ARTICLE 26

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irre-

spective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or national. The case must be presented within five years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits or other procedural limitations in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention. In particular, the competent authorities of the Contracting States may agree on the procedures for the application of the limits imposed on the taxation at source of dividends, interest, and royalties by Articles 10 (Dividends), 11 (Interest), and 12 (Royalties), respectively.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

ARTICLE 27

Exchange of Information and Administrative Assistance

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1 (General Scope). Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and adminstrative bodies) involved in the assessment, collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information the disclosure of which would be contrary to public policy.

ARTICLE 28

Diplomatic Agents and Consular Officers

Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE 29

Entry Into Force

1. This Convention shall be subject to ratification in accordance with the applicable procedures of each Contracting State and instruments of ratification shall be exchanged at Washington as soon as possible.

2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:

(a) in respect of taxes imposed in accordance with Articles 10 (Dividends), 11 (Interest), and 12 (Royalties), for amounts paid or credited on or after the first day of the second month next following the date on which the Convention enters into force;

(b) in respect of other taxes, for taxable periods beginning on or after the first day of January next following the date on which the Convention enters into force.

ARTICLE 30

Termination

1. This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year following after the period of five years from the date on which the Convention enters into force. In such event, the Convention shall cease to have effect in respect of taxes chargeable for any taxable year beginning on or after the first day of January in the calendar year next following that in which the notice is given.

In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed this Convention.

Done at Madrid, in duplicate, in the English and Spanish languages, both texts being equally authentic, this twenty-second day of February, 1990.

FOR THE
UNITED STATES OF AMERICA:

FOR THE KINGDOM OF
SPAIN:

PROTOCOL

At the moment of signing the Convention between the United States of America and the Kingdom of Spain for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on Income, the undersigned have agreed upon the following provisions which shall be an integral part of the Convention.

1. *With reference to paragraph 3 of Article 1 (General Scope)*

For purposes of paragraph 3, the term "citizen" shall include a former citizen whose loss of citizenship has as one of its principal purposes the avoidance of tax, but only for a period of 10 years following such loss. For the application of this provision to a resident of a Contracting State, the competent authorities shall consult together on the purposes of such loss of citizenship.

2. *With reference to paragraph 1(b) of Article 2 (Texas Covered)*

Notwithstanding the provisions of paragraph 1(b):

(a) a Spanish company shall be exempt from the United States personal holding company tax in any taxable year only if all of its stock is owned by one or more individuals, who are not residents or citizens of the United States, in their individual capacities for that entire year; and

(b) a Spanish company shall be exempt from the accumulated earnings tax in any taxable year only if it is a company described in paragraph 1(f) of Article 17 (Limitation on Benefits).

3. *With reference to paragraph 1 of Article 3 (General Definitions)*

The Parties agreed to initiate, as soon as possible, the negotiation of a Protocol to extend the application of this Convention to Puerto Rico, taking into account the special features of the taxes applied by Puerto Rico.

4. *With reference to paragraph 1(d) of Article 3 (General Definitions)*

The term "any other body of persons" is understood to include an estate, a trust, or a partnership.

5. *With reference to paragraph 1 of Article 4 (Residence)*

For purposes of paragraph 1 of Article 4 it is understood that:

(a) A United States citizen or an alien admitted to the United States for permanent residence (a "green card" holder) is considered to be a resident of the United States only if the individual has a substantial presence in the United States or would be a resident of the United States and not of another

country under the principles of subparagraphs (a) and (b) of paragraph 2 of that Article;

(b) a partnership, estate, or trust is a resident of a Contracting State only to the extent that the income it derives is subject to tax in that State as the income of a resident; and

(c) the term "resident" also includes a Contracting State or a political subdivision or local authority thereof.

6. *With reference to Article 8 (Shipping and Air Transport)*

For purposes of Article 8, "income from the operation of ships or aircraft in international traffic" will be defined in accordance with paragraphs 5 through 12 of the Commentary on Article 8 (Shipping, Inland Waterways Transport and Air Transport) of the 1977 Model Convention for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital of the Organization for Economic Cooperation and Development.

7. *With reference to Article 10 (Dividends)*

(a) It is understood that the term dividends includes profits on a liquidation of a company which is a resident of a Contracting State.

(b) Subparagraphs (a) of paragraph 2 shall not apply to income attributable, whether distributed or not, to shareholders of the Spanish corporation and entities referred to in Article 12.2 of Law 44/1978 of 8 September 1978 and Article 19 of Law 61/1978 of 27 December 1978 or successor statutes, as long as said income is not subject to the Spanish corporation tax.

(c) Subparagraphs (a) of paragraph 2 shall not apply in the case of dividends paid by a Spanish investment institution which is subject to tax in Spain according to Article 34 or Article 35 of Law 46 of December 26, 1984 or successor statutes. Such dividends shall be taxable in Spain at the rate provided by subparagraph (b) of paragraph 2.

(d) Subparagraph (a) of paragraph 2 shall not apply in the case of dividends paid by a United States Regulated Investment Company or a Real Estate Investment Trust. In the case of dividends from a Regulated Investment Company, subparagraph (b) of paragraph 2 shall apply. In the case of dividends from a Real Estate Investment Trust, subparagraph (b) of paragraph 2 shall apply if the beneficial owner of the dividends is an individual holding a less than 25 percent interest in the Real Estate Investment Trust; otherwise, the rate of withholding applicable under domestic law shall apply.

8. *With reference to Article 11 (Interest)*

In the case of Spain:

(a) It is understood that income derived from financial assets covered by Law 14 of 25 May 1985 or successor statutes is included in paragraph 4.

(b) In the case of the financial assets which, according to the Law referred to in the preceding paragraph, are subject to a unique withholding of tax at the time of issue, the limitation on tax provided by paragraph 2 shall not apply.

9. *With reference to paragraph 2 of Article 12 (Royalties)*

(a) Royalties received in consideration for the use of, or the right to use, containers in international traffic, shall be taxable only in the Contracting State of which the recipient is a resident.

(b) For purposes of paragraph 2, whether a payment is in consideration for a copyright of a scientific work will be determined in accordance with the domestic law of the Contracting State in which the royalty arises.

10. *With reference to Article 13 (Capital Gains)*

(a) For purposes of Article 13, real property situated in the United States includes a United States real property interest.

(b) With respect to paragraph 3, it is understood that gains from the alienation of personal property (movable property) which are attributable to a permanent establishment which an enterprise of a Contracting State has or had in the other Contracting State and which is removed from the other Contracting State may be taxed in that other Contracting State in accordance with its law, but only to the extent of the gain that has accrued as of the time of such removal, and may be taxed in the first-mentioned Contracting State in accordance with its law, but only to the extent of the gain accruing subsequent to that time of removal.

(c) For purposes of paragraph 4, an alienation does not include a transfer between members of a group of companies that file a consolidated tax return, to the extent that the consideration received by the transferor consists of participations or other rights in the capital of the transferee or of another company resident in the same Contracting State that owns directly or indirectly 80 percent or more of the voting rights and value of the transferee, if:

(i) the transferor and transferee are companies resident in the same Contracting State;

(ii) the transferor or the transferee owns, directly or indirectly, 80 percent or more of the voting rights and value of the other, or a company resident in the same Contracting State owns directly or indirectly (through companies resident in the same Contracting State) 80 percent or more of the voting rights and value of each of them; and

(iii) for the purpose of determining gain on any subsequent disposition, the initial cost of the asset for the transferee is determined based on the cost it had for the transferor, increased by any cash or other property paid.

Notwithstanding the foregoing, if cash or property other than such participations or other rights is received, the amount of the gain (limited to the amount of cash or other property received), may be taxed by the other Contracting State.

11. *With reference to Article 14 (Branch Tax)*

(a) With reference to the additional tax that may be imposed under Article 14, it is understood that the tax may be imposed on income subject to tax under Article 6 (Income from Real Property) or paragraph 1 of Article 13 (Captial Gains) only when that income is, or has been, subject to tax on a net basis.

(b) With reference to paragraph 1(b) and paragraph 2, it is understood that the term "A bank" includes a savings bank ("Cajas de Ahorro").

12. *With reference to Article 15 (Independent Personal Services)*

The term "fixed base" shall be interpreted according to the Commentary on Article 14 (Independent Personal Services) of the 1977 Model Convention for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital of the Organization for Economic Cooperation and Development, and of any guidelines which, for the application of such Article, may be developed in the future.

13. *With reference to paragraph 1(d) of Article 17 (Limitation on Benefits)*

The tax-exempt organizations described in paragraph 1(d) of Article 17 include, but are not limited to, pension funds, pension trusts, private foundations, trade unions, trade associations, and similar organizations. In all events, a pension fund, pension trust, or similar entity organized for purposes of providing retirement, disability, or other employment benfits that is organized under the laws of a Contracting State shall be entitled to the benefits of the Convention if the organization sponsoring such fund, trust, or entity is entitled to the benefits of the Convention under Acticle 17.

14. *With reference to Article 19 (Artistes and Athletes)*

The provisions of paragraph 1 shall not preclude the imposition of withholding taxes at source in accordance with the domestic laws of the Contracting States. In such case, the provisions of paragraph 1 shall be made effective by way of refunding any excess taxes withheld after the close of the taxable year.

15. *With reference to paragraph 1(b) of Article 20 (Pensions, Annuities, Alimony, and Child Support.*

The rules applicable to social security benefits also apply to pensions paid from publicly administered funds for non-governmental services (such as payments from the Railroad Retirement Accounts in the United States).

16. *With reference to Article 22 (Students and Trainees)*

The amount of 5,000 United States dollars referred to in paragraph 1(b)(iii) and the amount of 8,000 United States dollars referred to in paragraph 2(b) includes any amount excluded or exempted from taxation under the laws of that other Contracting State.

17. *With reference to paragraph 1(b) of Article 24 (Relief from Double Taxation)*

In the case of a company created during the taxable year preceding the payment of the dividend, the previous taxable year, for the purpose of paragraph 1(b), is deemed to begin on the date of creation of such company.

18. *With reference to paragraph 1 of Article 26 (Mutual Agreement Procedure)*

The term "first notification" means, in the case of the United States, the Notice of Deficiency as provided for under section 6212 of the Internal Revenue Code and, in the case of Spain, the Notification of the Administrative Act of Assessment. In the case of taxes at source, the "first notification" means, in the case of both Contracting States, the date on which the tax is withheld or paid.

19. *With reference to Article 27 (Exchange of Information and Administrative Assistance)*

(a) Article 27 shall be interpreted consistently with the Commentary on Article 26 (in Exchange of Information) of the 1977 Model Convention for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital of the Organization for Economic Cooperation and Development.

(b) The competent authorities of the Contracting States shall, even without previous request, exchange such information as is necessary to ensure that the benefits of the Convention are applied only to those entitled thereto.

20. *With reference to Article 29 (Entry into Force)*

In the event of substantial changes in the domestic legislation of either Contracting State or in their tax relations with other States, either by virtue of new developments in their policy regarding tax treaty negotiations or as a consequence of changes which may occur in the supernational systems of integration to which the Contracting States are Parties, the competent authorities shall consult together on the appropriateness of negotiating modification of the Convention to reflect such changes.

In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed this Protocol.

Done at Madrid, in duplicate, in the English and Spanish languages, both texts being equally authentic, this twenty-second day of February, 1990.

FOR THE
UNITED STATES OF AMERICA:

Joseph Zappala

FOR THE KINGDOM OF
SPAIN:

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